

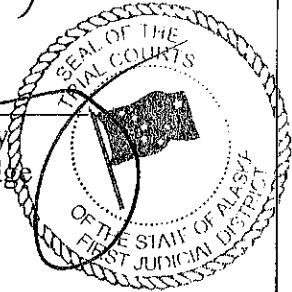


1 The court believes that this fully complies with the remand from the Court of Appeals.  
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3 ***IT IS SO ORDERED.***  
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5 Dated: February 1, 2022  
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William B. Carey  
Superior Court Judge



9 **CERTIFICATION**  
Copies Distributed

10 Date 2/1/22

11 To DA, PD,

CoA

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12 By STJ



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

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December 1, 2021

**VIA EMAIL**

To: All Chiefs and Commanders of Law Enforcement Agencies in Alaska  
Re: *Brady/Giglio* Information in Personnel Files

Dear Chiefs and Commanders:

This letter serves to advise you of a recent (November 5, 2021) opinion handed down by the Alaska Court of Appeals, *Stacy v. State*<sup>1</sup>, and its impact on the prosecution of cases from each of your agencies. This case requires Alaskan prosecutors to inquire of law enforcement agencies (LEAs) about any *Brady/Giglio* information contained in agency personnel files for each testifying officer for each and every case prosecuted. A prosecutor's failure to provide such information could result in the case being overturned or dismissed.

**Legal Background**

The Supreme Court of the United States held in *Brady v. Maryland* that the prosecution in a criminal case is required to provide to the defendant any and all exculpatory information in its possession.<sup>2</sup> That holding was expanded in *Giglio v. U.S.* to require the prosecution to also provide any relevant impeachment material in its possession for any testifying witness.<sup>3</sup> *Brady/Giglio* material can include information contained in LEA personnel files such as sustained findings of dishonesty, and pending investigations against any testifying officer.<sup>4</sup> Such information may be used to impeach a witness's credibility. Failure to provide known information in a case could lead to the

<sup>1</sup> Court of Appeals No. A-12668 issued November 5, 2021. Slip opinion available at <https://appellate-records.courts.alaska.gov/CMSPublic/Home/AppellateOpinions>

<sup>2</sup> 373 U.S. 83 (1963).

<sup>3</sup> 405 U.S. 150 (1972).

<sup>4</sup> See *Booth v. State*, 251 P.3d 369 (Alaska App. 2011).

Re: *Brady/Giglio* Information in Personnel Files

case being dismissed by either the court or the prosecution, a conviction being overturned, and potential administrative (or in extreme instances of a willful refusal, criminal sanctions for depravation of constitutional rights) against the involved law enforcement and prosecution personnel. The sanctions are determined on a case-by-case basis depending on the facts/circumstances of the information not provided.

LEA personnel records are confidential by statute,<sup>5</sup> but certain parts may be subject to discovery in some legal cases.<sup>6</sup> As a result, the Department of Law (LAW) has not had access to personnel records absent a court order or other legally binding agreement. Since 2014, LAW has sought to establish Memoranda of Agreement (MOAs) with various LEAs about relevant information contained in their personnel files for cases prosecuted by LAW.<sup>7</sup> This process has allowed LAW to be proactive in gathering this potential *Brady/Giglio* material in the majority of the cases LAW prosecutes.<sup>8</sup> In the past, when the command staff or human resources department at a LEA knew that *Brady/Giglio* information was contained in an officer's personnel file, the fact that some potential Brady material was in the file was conveyed to LAW's designated representative in the Criminal Division Central Office (CDCO). That representative would have the officer's profile in the Criminal Division's case management system updated so that the representative would receive an alert when the officer was listed or subpoenaed as a witness in any criminal case. The attorney in CDCO would review the specific facts of the charged case and consult with the assigned prosecutor to determine whether the officer was a material witness and if the limited information available to LAW should be provided to the assigned judge to request the personnel file for *in camera* review and potential disclosure to the parties. This procedure complies with the requirement to provide *Brady/Giglio* information. Under this process, the assigned prosecutor in a case relied upon the LEA and assigned attorney in CDCO to engage in this process, and that individual prosecutor did not have actual knowledge as to whether *Brady/Giglio* material existed.

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<sup>5</sup> AS 40.25.120(4) and AS 39.25.080

<sup>6</sup> *Jones v. Jennings*, 788 P.2d 732 (Alaska 1990)(records of excessive use of force discoverable in complaint about excessive use of force, but home address, family members, and financial information was not discoverable.)

<sup>7</sup> See *Booth v. State*, 251 P.3d 369, 374 (Alaska App. 2011) ("If the defendant identifies a type of information that would be relevant to the defendant's guilt or innocence (in light of the facts of the case, the State's theory of prosecution, and the defendant's theory of defense), and if this type of information is the kind of information that would be recorded in a police officer's personnel file, then the defendant is entitled to have the trial judge review the personnel file *in camera* to see if the file contains the specified type of information.").

<sup>8</sup> MOAs have been established with the Department of Public Safety, Anchorage Police Department, Kodiak Police Department, Palmer Police Department, and Soldotna Police Department.

However, the Alaska Court of Appeals recently held in *Stacy v. State*, that “a system must be in place through which individual prosecutors can learn of *Brady* material in the personnel files of law enforcement officers and other state agents who will be material witnesses in a given case.”<sup>9</sup> The prosecutor is required to ensure that “reasonable steps have been taken to discover and disclose any favorable material evidence contained in those files.”<sup>10</sup> In order to comply, LAW will slightly alter our system for reporting exculpatory or impeachment evidence in officer personnel files as described below.

### **System for Reporting *Brady/Giglio* Information**

When a LEA knows of *Brady/Giglio* information contained in an officer’s personnel file, it will notify the assigned attorney in CDCO of potential *Brady/Giglio* information in the file. If the information provided qualifies as material exculpatory evidence the assigned attorney will create an “alert” in the Criminal Division’s case management system (Prosecutor by Karpel—PBK) associated with the officer’s profile in that system. The attorney in CDCO and *now the assigned line prosecutor will also* then receive an alert whenever that officer is listed as a witness in case. The line prosecutor will not know what sort of information is in the officer’s personnel file, but that attorney will be prompted to consult with the CDCO attorney to review the matter. The assigned CDCO attorney will then coordinate providing the potentially exculpatory information to the trial court for *in camera* review and potential disclosure when appropriate. Under this process, the absence of an alert from CDCO will allow the assigned prosecutor to comply with the requirement in *Stacy*.

In order for LAW to ensure that all agencies from which it accepts referred criminal cases comply with this procedure, the LEAs are requested to execute the attached Memorandum of Agreement (MOA) stating that the agency will alert the assigned attorney in CDCO when *Brady/Giglio* information exists in an officer’s personnel file. Following the holding in *Stacy*, LAW will not be able to prosecute cases referred by agencies that have not entered into the attached MOA, absent seeking an *in camera* review for each officer intended to be called by the prosecution as a witness in each case.

### **Conclusion**

The system for reporting information described above is necessary for prosecutors to comply with their obligation to provide material exculpatory evidence to a defendant as set out in *Brady*, *Giglio*, and *Stacy*. This system is not a significant departure from

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<sup>9</sup> *Stacy* Slip Opinion at \*31.

<sup>10</sup> *Id.*

December 1, 2021

Page 4 of 4

Re: *Brady/Giglio* Information in Personnel Files

LAW's past practice, however it creates a requirement for a formalized agreement in the form of the attached MOA between your agency and LAW for prosecution of most the cases referred. The only other option, *in camera* review in each case for every officer testifying, is simply not workable. The signed MOA allows LAW to document and provide evidence of your agency's agreement to follow the system described herein. This will ensure that individual prosecutors can certify to the court that reasonable steps have been taken to alert the prosecution to any exculpatory information contained in your agency's personnel files.

Sincerely,

TREG R. TAYLOR  
ATTORNEY GENERAL

By: *John Skidmore*  
John Skidmore  
Deputy Attorney General

CC:

Chief Justice Daniel Winfree, Alaska Supreme Court  
Chief Judge Marjorie Allard, Alaska Court of Appeals  
Judge Amy Mead, Judge Paul Roetman, Judge William Morse, Judge Terence Haas,  
Presiding Superior Court Judges  
Samantha Cherot, Public Defender Agency  
James Stinson, Office of Public Advocacy